

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Volha Shauchenka	Team: Squad #8	CCRB Case #: 201708658	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 10/14/2017 10:55 PM	Location of Incident: In front of 3900 White Plains Road	Precinct: 47	18 Mo. SOL 4/14/2019	EO SOL 4/14/2019	
Date/Time CV Reported Sun, 10/15/2017 8:25 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/19/2017 11:02 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Dinerky Pinales	20470	959077	047 PCT
2. POM Stanley Baez	15980	957351	047 PCT
3. SGT Melvin Moultrie	02183	933046	047 PCT
4. An officer			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Lennin Badia	19794	958281	047 PCT
2. POM Jeffrey Reisenauer	13405	956195	047 PCT
3. POM John Noonan	12863	956132	047 PCT
4. POM Cody Petrucci	12902	956165	047 PCT
5. POM Rafael Rispoli	12456	956201	047 PCT
6. POM Edyma Luctamar	25362	946515	047 PCT
7. POM Seville Legrand	09305	957447	047 PCT
8. POM Angel Rivera	18771	959932	047 PCT
9. SGT Edward Lenis	04355	922639	NARCB BX
10. POM Christophe Crocitto	07873	940035	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Melvin Moultrie	Force: Sergeant Melvin Moultrie used physical force against § 87(2)(b)	
B.SGT Melvin Moultrie	Force: Sergeant Melvin Moultrie used physical force against § 87(2)(b)	
C.SGT Melvin Moultrie	Force: Sergeant Melvin Moultrie used a Taser against § 87(2)(b)	
D.SGT Melvin Moultrie	Force: Sergeant Melvin Moultrie used a Taser against § 87(2)(b)	
E.SGT Melvin Moultrie	Force: Sergeant Melvin Moultrie used a Taser against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
F.POF Dinercy Pinales	Force: Police Officer Dinercy Pinales used a Taser against § 87(2)(b)	
G.POM Stanley Baez	Force: Police Officer Stanley Baez used a Taser against § 87(2)(b)	
H.SGT Melvin Moultrie	Force: Sergeant Melvin Moultrie used physical force against § 87(2)(b)	
I.SGT Melvin Moultrie	Off. Language: Sergeant Melvin Moultrie made remarks to § 87(2)(b) based upon race.	
J.SGT Melvin Moultrie	Discourtesy: Sergeant Melvin Moultrie spoke discourteously to § 87(2)(b)	
K. An officer	Force: An officer used physical force against § 87(2)(b)	
L.SGT Melvin Moultrie	Discourtesy: Sergeant Melvin Moultrie acted discourteously toward § 87(2)(b)	

## Case Summary

On October 14, 2017, Lt. Michael Kaiser of the 47<sup>th</sup> Precinct filed this complaint on behalf of § 87(2)(b) with IAB over the telephone, generating log #2017-40147.

On October 14, 2017, at approximately 10:55 p.m., in front of 3900 White Plains Road, in the Bronx, Sgt. Melvin Moultrie of the 47<sup>th</sup> Precinct allegedly knelt § 87(2)(b) in the back and took him to the ground (**Allegations A and B: Force,** § 87(2)(g) § 87(2)(g)). Sgt. Moultrie used his Taser three times against § 87(2)(b) (**Allegations C, D and E: Force,** § 87(2)(g)). PO Dinercy Pinales and PO Stanley Baez of the same command allegedly used their Tasers against § 87(2)(b) (**Allegations F and G: Force,** § 87(2)(g)). Sgt. Moultrie allegedly applied pressure to § 87(2)(b)'s back with his knee after § 87(2)(b) was handcuffed and rubbed § 87(2)(b)'s face on the pavement of the road (**Allegation H: Force,** § 87(2)(g)). Sgt. Moultrie also allegedly told § 87(2)(b) "Nah, nigga. Nah, motherfucker," several times throughout the incident (**Allegation I: Offensive Language,** § 87(2)(g)). **Allegation J: Discourtesy,** § 87(2)(g). An unidentified officer from an unknown command punched § 87(2)(b) twice in his legs (**Allegation K: Force,** § 87(2)(g)). In addition, Sgt. Moultrie allegedly placed § 87(2)(b)'s shirt over his head to prevent him from seeing what was around (**Allegation L: Discourtesy,** § 87(2)(g)).

Cell phone video of the interior surveillance camera installed inside Jordan First deli where § 87(2)(b) had an altercation with the clerk that preceded the incident was obtained by the CCRB Field Team [BR 01, *Original*]. Four cell phone videos recorded by a civilian witness known as § 87(2)(b) were also obtained by the Field Team [BR 02 – 05, *Originals*]. Eight video clips recorded by PO Baez's, PO Pinales', PO Edyma Luctamar's, PO Lennin Badia's, PO Jeffrey Reisenauer's, and PO John Noonan's body worn cameras (BWC) were obtained by the investigation [BR 40 - 47, *Originals*]. Additional officers named above are all assigned to the 47<sup>th</sup> Precinct.

## Findings and Recommendations

**Allegation (A) Force: Sergeant Melvin Moultrie used physical force against § 87(2)(b)**

**Allegation (B) Force: Sergeant Melvin Moultrie used physical force against § 87(2)(b)**

**Allegation (C) Force: Sergeant Melvin Moultrie used a Taser against § 87(2)(b)**

**Allegation (D) Force: Sergeant Melvin Moultrie used a Taser against § 87(2)(b)**

**Allegation (E) Force: Sergeant Melvin Moultrie used a Taser against § 87(2)(b)**

**Allegation (F) Force: Police Officer Dinercy Pinales used a Taser against § 87(2)(b)**

**Allegation (G) Force: Police Officer Stanley Baez used a Taser against § 87(2)(b)**

It is undisputed that on October 14, 2017, at approximately 10:55 p.m., inside Jordan First deli located at 3900 White Plains Road in the Bronx, § 87(2)(b) was involved in a verbal dispute with the clerk over a purchase, during which § 87(2)(b) swiped various items off the counter. Sgt. Moultrie, PO Baez and PO Pinales were conducting an unrelated vehicle stop on the opposite side of the street and the commotion drew Sgt. Moultrie's attention. He entered the store to investigate.

During his in-person testimony to the CCRB, § 87(2)(b) stated that when he observed Sgt. Moultrie, the sergeant instructed him to place his hands behind his back at least four times and slapped his arm a few times in attempt to push it down while he was talking [BR 09]. § 87(2)(b)

§ 87(2)(b) noted that Sgt. Moultrie was not strong enough to place his hands behind his back. § 87(2)(b) did not comply because he did not believe he should be arrested for what he had done and attempted to explain to Sgt. Moultrie what had happened. Sgt. Moultrie kept instructing § 87(2)(b) to place his hands behind his back and informed him he would go to the precinct. § 87(2)(b) thought of running and placed his left side towards Sgt. Moultrie. Sgt. Moultrie knelt § 87(2)(b) in his lower back on the left side and pushed § 87(2)(b) with his hands on his back. § 87(2)(b) started stumbling and falling on the ground outside the store. § 87(2)(b) did not recall if Sgt. Moultrie was holding him during the fall. Sgt. Moultrie said that § 87(2)(b) was “out of control” and one of the officers said, “Let’s just Tase him.” As he was falling, § 87(2)(b) turned his head and observed PO Pinales and PO Baez discharge their Tasers at him but believed that all three officers tased him. Three prongs hit § 87(2)(b) in his back near his shoulder blades. § 87(2)(b) fell to the ground first on his knee and then on his stomach. He felt the electrical current go through his body for two – three minutes and believed that two officers were using their Tasers while the third stopped. As he was being tased, § 87(2)(b) moved to the street and attempted to pull out the Taser prongs. § 87(2)(b) was consistent in his preceding statement to the CCRB apart from the inconsistency in identifying the officer who tased him [BR 08]. § 87(2)(b) initially stated he was certain a female officer tased him but was not certain who else. § 87(2)(b) alleged he sustained abrasions of various sizes to his forehead, elbows, knees, upper right arm, mid-left arm; small lacerations to his stomach; and contusions to his upper legs from being taken to the ground [See photos BR 10, 11, 14-26].

In his unverified phone statement to the CCRB, civilian witness § 87(2)(b) whose contact information was provided by § 87(2)(b) and who he knows from the neighborhood, stated he was inside a different store near the location when he heard an argument [BR 12]. He stepped outside and observed § 87(2)(b) arguing with a store clerk. Two officers, a male and a female, arrived at the location and instructed § 87(2)(b) to turn around and put his hands behind his back a few times. § 87(2)(b) did not comply and started explaining what had happened. An argument between the officers and § 87(2)(b) ensued and after three – four minutes, they started “tussling.” The officers grabbed § 87(2)(b) and turned him around and then a female officer described as Hispanic, 5’5” tall, stocky, in her 20s – early 30s discharged her Taser at § 87(2)(b) for approximately 30 seconds. § 87(2)(b) did not observe where the Taser hit § 87(2)(b). Eventually, two more officers approached § 87(2)(b) and all four of them together with § 87(2)(b) moved to the ground. § 87(2)(b) was inconsistent in explaining how they got to the ground. § 87(2)(b) approached § 87(2)(b) but his vision was obstructed. § 87(2)(b) stated that after § 87(2)(b) was tased, he was not moving and was not “combative.” § 87(2)(b) was uncooperative with the CCRB after indicating he wished to think whether he wanted to provide a verified statement [BR 35].

In his unverified phone statement, civilian witness § 87(2)(b) whose contact information was provided by § 87(2)(b) and who he knows from the neighborhood, stated he was in a barber shop near the deli where the incident took place [BR 13]. He along with other individuals heard a commotion and ran outside. He observed officers pull § 87(2)(b) out of the store while he was asking what was happening. The officers were attempting to place § 87(2)(b) to the ground but were not immediately able to do so since he is a large individual. The officers were beating and punching § 87(2)(b) as they were attempting to do so. Eventually, when § 87(2)(b) was on the ground, he was tased by a female officer a few times. § 87(2)(b) was further uncooperative and did not answer clarifying questions [BR 35].

§ 87(2)(b) who recorded the cell phone videos, and the store clerk identified as § 87(2)(b) were uncooperative with and unavailable for the investigation, respectively [BR 35].

Sgt. Moultrie testified that when he reached the store, he instructed § 87(2)(b) to “hold up” several times since he was not free to leave [BR 39]. § 87(2)(b) pushed past Sgt. Moultrie to the street and attempted to flee. Sgt. Moultrie grabbed § 87(2)(b) by his arm but he started moving his arms to evade Sgt. Moultrie. Sgt. Moultrie grabbed § 87(2)(b) by his waist and arm and they both fell to the ground. Sgt. Moultrie was inconsistent in explaining whether he initiated the take-down or it happened by accident and noted several times he was “happy” that occurred. Sgt. Moultrie denied kneeling § 87(2)(b) in the back at that point. Sgt. Moultrie did not recall what positions both of them landed to the ground in and stated he immediately attempted to handcuff § 87(2)(b) for safety purposes since he did not know if § 87(2)(b) had any weapons and had just observed him behaving in a disorderly manner. In addition, Sgt. Moultrie intended to issue § 87(2)(b) a summons for disorderly conduct “at minimum.” PO Baez and PO Pinales approached § 87(2)(b) and Sgt. Moultrie and attempted to assist him in handcuffing. § 87(2)(b) was moving his arms with a lot of strength in a way that prevented them from handcuffing him but was not doing anything else. Sgt. Moultrie issued § 87(2)(b) multiple commands to give them his hands and to stop resisting but he did not comply. At some point, while all three officers attempted to handcuff § 87(2)(b) he did a complete “push up” position exhorting a lot of strength. When asked if § 87(2)(b) stood up and was taken to the ground again, Sgt. Moultrie stated that was possible due to the nature of the incident but he did not recall for certain.

§ 87(2)(b) then started rolling his body to the sides and then lied on his stomach with his hands underneath his body, which Sgt. Moultrie perceived as dangerous since he could not see his arms and § 87(2)(b) could be reaching for something. Sgt. Moultrie was lying on top of § 87(2)(b) attempting to reach his arms and PO Baez and PO Pinales were nearby as well. § 87(2)(b) flung his arms and PO Pinales fell to the ground as a result. Sgt. Moultrie later learned that PO Pinales sustained injuries to her knee and palms. After that, Sgt. Moultrie decided to tase § 87(2)(b) because he needed to gain compliance from him and he was behaving in a dangerous manner towards the officers and himself. Sgt. Moultrie told § 87(2)(b) he was going to tase him but § 87(2)(b) continued his resistance. Sgt. Moultrie stood over § 87(2)(b) while he was still on the ground, said, “Taser, taser,” and discharged his Taser in § 87(2)(b)’s lower back. Due to the heat of the moment, Sgt. Moultrie did not recall for how long he used the Taser and how many times. He recalled however that at some point the cartridge or the wires might have become loose, therefore, he might have also used the Taser in Drive stun mode after the first tasing attempt. Sgt. Moultrie was the only officer to use his Taser against § 87(2)(b) and he estimated that approximately 30 seconds have passed since the initial encounter. The Taser had no effect on § 87(2)(b) and he continued lying on the ground extending his arms in front of himself. It appeared to Sgt. Moultrie as if § 87(2)(b) has become stronger.

PO Pinales testified that she was across the street when she observed Sgt. Moultrie struggling with § 87(2)(b) and ran towards them [BR 28]. She did not recall if § 87(2)(b) was standing initially but noted that when she reached him, § 87(2)(b) and Sgt. Moultrie were already on the ground. PO Pinales did not observe Sgt. Moultrie knee § 87(2)(b) in his back. PO Pinales attempted to assist Sgt. Moultrie in handcuffing § 87(2)(b) but he was moving his arms outward and sideways. PO Pinales was consistent with Sgt. Moultrie in stating that the officers issued § 87(2)(b) numerous commands to stop resisting. PO Pinales did not recall for how long their attempts lasted but recalled that at some point § 87(2)(b) was tased possibly by Sgt.

Moultrie since he had a Taser. PO Pinales did not tase § 87(2)(b) since she is not Taser qualified and not equipped with a Taser. PO Pinales did not recall if any warning was given to § 87(2)(b) but recalled that the prongs hit § 87(2)(b) in his lower back. She did not recall how long the Taser was used for. The Taser had no effect on § 87(2)(b) because he stood up, partially or fully. PO Pinales attempted to grab one of § 87(2)(b)'s arms and felt a push either from the side or back. As a result, she fell to the ground on her right knee and hands.

In his interview at the CCRB, PO Baez was generally consistent with PO Pinales's account of the incident with the following exceptions [BR 27]. He confirmed he observed § 87(2)(b)'s behavior inside the store and saw Sgt. Moultrie run after § 87(2)(b) who left the store. PO Baez was in his car and drove towards the location. By the time he exited the car, § 87(2)(b) and Sgt. Moultrie were "tangled" on the ground in a position PO Baez could not describe. PO Baez was unaware how they got to the ground or if Sgt. Moultrie knelt § 87(2)(b) in his back. PO Baez attempted to assist Sgt. Moultrie by grabbing § 87(2)(b)'s arms and was consistent in describing § 87(2)(b)'s actions during that time adding that § 87(2)(b) was also moving his legs and body around. PO Baez described § 87(2)(b) as a strong individual and stated the officers' attempts to handcuff § 87(2)(b) lasted for some time. At some point, Sgt. Moultrie tased § 87(2)(b) in a manner similar to the one described by PO Pinales. PO Baez denied using a Taser since he is not Taser qualified either and is not equipped with a taser. PO Baez stated that Sgt. Moultrie was the only officer who tased § 87(2)(b). PO Baez was consistent with his partners in describing the nonexistent effect of the Taser on § 87(2)(b).

Video from Jordan First deli depicts § 87(2)(b) swiping various items off the counter [BR 01].

Video recorded by PO Baez's body worn camera (BWC) depicts him rushing to the scene in his vehicle [BR 40, *Original; the video was not embedded in the closing report due to size limitations*]. PO Baez reaches § 87(2)(b) PO Pinales and Sgt. Moultrie at 34 seconds. At that moment, § 87(2)(b) is already lying on the ground on his stomach and PO Pinales and Sgt. Moultrie are holding him. PO Pinales is repeatedly telling § 87(2)(b) to stop moving and PO Baez instructs him to place his hands behind his back. At 38 seconds, officers are holding § 87(2)(b)'s right hand behind his back and his left hand is underneath his body. PO Pinales and one of the officers instruct § 87(2)(b) to give them the hand and the camera starts shaking. § 87(2)(b) repeatedly tells the officers, "Just listen to me... Please... Please." At 50 seconds, an officer says, "Taser, Taser," while PO Baez's camera spins around and falls to the ground. At 55 seconds, the beeping of Taser is heard for 4 seconds, and § 87(2)(b) continues asking the officers multiple times to listen to him and PO Pinales tells him to stop. Between 1:12 and 1:14 minutes, the Taser is beeping again.

Video recorded by PO Pinales' BWC depicts her running towards the deli from across the street [BR 41, *Original; the video was not embedded in the closing report due to size limitations*]. When she reaches the incident location at 12 seconds, § 87(2)(b) is seen sitting on his knees and then his upper body is seen pressed towards the ground by Sgt. Moultrie, who is holding § 87(2)(b) by the back of his hooded sweater. PO Pinales assists Sgt. Moultrie by holding § 87(2)(b) by the back of his head and then arm. § 87(2)(b) lies with his hands under his body and at 15 seconds, takes his wallet that is lying on the ground. At 20 seconds, officers attempt to place § 87(2)(b) left arm behind his back by holding his elbow and palm and he moves it away and places it on the ground. The officers continue pulling that arm behind § 87(2)(b)'s arm and at 30 seconds, when the audio starts, PO Pinales starts telling § 87(2)(b) to stop multiple times. PO Baez is seen to § 87(2)(b)'s right side lying on the ground. At 34 seconds, § 87(2)(b) reaches

for his wallet and starts standing up. At 36 seconds, an officer screams, “Taser, Taser,” and the shooting sound of the prongs is heard. At 40 seconds, Sgt. Moultrie is in the camera view holding his Taser with the wires extended down and the Taser is beeping for three-four seconds. During this time, at 42 seconds, § 87(2)(b) is seen sitting on the ground with his knees and arms and the Taser is in his lower back. PO Baez and PO Pinales are holding § 87(2)(b) on both sides. § 87(2)(b) continues making the same statements. There is a lot of movement and struggle in front of the camera and at 51 second, an officer says, “Another one,” and 53 seconds, the beeping sound of the Taser is heard again. At 58 seconds, PO Pinales screams and the video ends. Upon reviewing the video, PO Pinales stated she did not recall how § 87(2)(b) got to the ground in the beginning of the video [BR 28]. She confirmed that the scream at the end of the video occurred at the time when she fell to the ground.



Cell phone video 1.mp4

[BR 36]

Witness cell phone video 1 of 4



Cell phone video 2.mp4

[BR 37]

Witness cell phone video 2 of 4



Cell phone video 3.mp4

[BR 38]

Witness cell phone video 3 of 4

Video 1 of 4 recorded by § 87(2)(b) shows § 87(2)(b) walking on the street and moving his arms, while PO Pinales, PO Baez, and Sgt. Moultrie attempt to hold him by his arms [BR 36]. At 2 seconds, PO Baez loses his grip and his body swings in an opposite direction. At 3 seconds, Sgt. Moultrie uses the Taser in a Drive stun mode against § 87(2)(b)'s lower right side. At 5 seconds, § 87(2)(b) falls to the ground and all three officers fall after him. After the fall, PO Pinales is seen sitting up and her hair is disheveled. During this clip, § 87(2)(b) yells repeatedly that officers are not listening to him. Upon reviewing this video, Sgt. Moultrie stated it most likely depicted the events after the first fall when § 87(2)(b) possibly stood up again [BR 34]. Sgt. Moultrie confirmed that he used his Taser in a Drive stun mode because the cartridge or the wires became loose and his previous attempt of tasing § 87(2)(b) was unsuccessful. Sgt. Moultrie believed that during this part of the incident § 87(2)(b) fell by himself. Sgt. Moultrie also indicated that this video depicted PO Pinales' fall. PO Pinales was consistent with Sgt. Moultrie in her comments to this video [BR 28].

Cell phone videos 3 and 4 depict the struggle between the officers and § 87(2)(b) at unknown stages of the incident, most likely after he was tased [BR 37, 38].

Video recorded by PO Reisenauer's and PO Noonan's BWC depicts § 87(2)(b) being transported from the scene in a police vehicle and then placed in an ambulance [BR 45, 46, 47; *Originals, the videos were not embedded in the closing report due to size limitations*]. § 87(2)(b) attempts to tell the officers his side of the story and repeats the same statements multiple times.

According to § 87(2)(b)'s ambulance care report, he complained of having been tased and sustained injuries as a result of a fight [BR 01]. The narrative notes that § 87(2)(b) resisted arrest and was under the influence of something, which he did not want to admit. § 87(2)(b) was unable to sign the report due to the "probability of acting out if uncuffed." The EMTs' initial impression was that § 87(2)(b) had an unspecified behavioral disorder.

§ 87(2)(b)'s medical records from § 87(2)(b) note that he was brought to the emergency room with a complaint of pain to his *right shoulder, right knee* and back as well as of being tased [PD 02]. There were two prongs in his back and the lacerations were not bleeding. X-rays of his *left shoulder* and *knee* were performed and no acute injuries were discovered. The Taser prongs were removed with some local anesthesia. § 87(2)(b) was administered some pain medication and discharged with the diagnosis of electrocution. His alcohol level was noted as less than 10mg/dL and medical history includes depression.

§ 87(2)(b)'s pre-arraignment screening form notes that he had head and left shoulder injuries but it was an EMTs impression that he was not injured [PD 03]. It was noted that § 87(2)(b) was taking medication for depression.

The narratives in § 87(2)(b)'s arrest report § 87(2)(b) and AIDED report § 87(2)(b) prepared for PO Pinales are consistent with the officers' account of the incident [NYPD 05, 17]. § 87(2)(b)'s arrest photo does not depict any physical injuries to his face or the left side of his head [NYPD 02]. AIDED report § 87(2)(b) was also prepared for PO Baez [NYPD 05]. It notes that the officer rolled over to his lower back and had pain as a result of § 87(2)(b) falling to the ground. PO Baez sustained pain to his knees, lower back and right shoulder.

Threat, resistance and injury (TRI) report § 87(2)(b) prepared for Sgt. Moultrie by Lt. Kaiser was consistent with his statement to the CCRB [NYPD 06]. Sgt. Moultrie explained that § 87(2)(b)'s documented allegations of pain to his left shoulder and knees with abrasions must have been related to another officer since § 87(2)(b) never complained to Sgt. Moultrie of any pain nor did Sgt. Moultrie observe any injuries to him. Sgt. Moultrie explained that the take-down was documented because he and § 87(2)(b) fell to the ground. At that point, Sgt. Moultrie stated that although their fall happened as a result of momentum, he initiated it. Photos attached to the TRI depict the areas of § 87(2)(b)'s lower back where the prongs hit him and an abrasion to his knee.

TRI reports § 87(2)(b) and § 87(2)(b) prepared for PO Pinales and PO Baez by Lt. Kaiser are generally consistent with their statements to the CCRB [NYPD 06].

Investigating Supervisor's Assessment Report prepared by Capt. Jeremy Scheublin of the same command notes that an unidentified individual approached the subject officers and informed them that § 87(2)(b) was stealing from the store [NYPD 06]. § 87(2)(b) refused to provide his identification or comply with the officers' commands. He also appeared to be intoxicated. PO Pinales did not recall if she had any suspicion if § 87(2)(b) was intoxicated [BR 28]. While PO Baez did not recall smelling any substances from § 87(2)(b) he believed that § 87(2)(b) was not in his "right state of mind" because of his actions in the deli, his resistance, "aggressive" tone, general demeanor and the fact that the Taser had no effect on him [BR 27]. Sgt. Moultrie provided a similar response to PO Baez's stating that § 87(2)(b)'s behavior could be indicative of the fact that he was under the influence of something [BR 34].

Sgt. Oliver J. Camilleri of IAB was assigned to a concurrent IAB investigation of the incident under the log #17-40147 [NYPD 12]. Sgt. Camilleri made his disposition based on the findings documented by Capt. Scheublin, BWC footage, and police documentation prepared in regards to the incident. Capt. Scheublin attempted to interview § 87(2)(b) but he was



uncooperative. He concluded that the subject officers attempted to stop § 87(2)(b) for being disorderly and alleged petit larceny and § 87(2)(b) refused their verbal commands. Sgt. Moultrie took § 87(2)(b) to the ground, after which § 87(2)(b) resisted by “flailing” his arms and legs. Therefore, Sgt. Moultrie tased § 87(2)(b). The allegation of Level 2 force was closed as Information and Intelligence and CEW/Taser discharged was closed as exonerated.

According to NYPD Patrol Guide Procedure 221-01, officers may use force when reasonable to ensure the safety of an officer or a third person or when it is reasonable to place a person in custody or to prevent escape from custody [BR 48]. When appropriate, officers will use de-escalation techniques to safely gain voluntary compliance. As noted in NYPD Patrol Guide Procedure 221-08, a Conducted Electrical Weapon (CEW) should only be used against persons who are actively resisting, exhibit active aggression, or to prevent individuals from physically injuring themselves and others [BR 49]. Active resisting includes physically evasive movements including bracing, tensing, pushing or verbally signaling intention to avoid being taken into custody. When using a CEW, an officer should assess the totality of the circumstances as well as some of the following factors: nature of the crime committed by the suspect, actions taken by the suspect, duration of action, immediacy of the perceived threat to the subject, officers or bystander, whether the subject is actively resisting, whether the person is attempting to evade arrest by flight, number of subjects, size, age and condition of the subject, their violent history, presence of hostile crowd, and if the subject is apparently under the influence of a stimulant.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (H) Force: Sergeant Melvin Moultrie used physical force against § 87(2)(b)**  
**Allegation (I) Offensive Language: Sergeant Melvin Moultrie made remarks to § 87(2)(b)**  
**§ 87(2)(b) based upon race.**  
**Allegation (J) Discourtesy: Sergeant Melvin Moultrie spoke discourteously to § 87(2)(b)**

§ 87(2)(b) stated he was handcuffed by Sgt. Moultrie immediately after he was tased [BR 09]. § 87(2)(b) alleged that after that, Sgt. Moultrie placed his knee on his back and applied pressure to his stomach as if “screwing” it in. Sgt. Moultrie also grabbed § 87(2)(b)’s head with his palm and rubbed his forehead on the pavement eight times. § 87(2)(b) had no control of his head and was not moving it himself. As a result, § 87(2)(b) sustained a deep abrasion to the top of his head [See photos BR 10, 11, 14-26]. § 87(2)(b) asked Sgt. Moultrie to be “easy,” and Sgt. Moultrie replied, “Nah, nigga. Nah, motherfucker.” Sgt. Moultrie made these statements several times during the incident. There were no additional officers on the scene during this part of the incident. § 87(2)(b) was consistent in his preceding testimony to the CCRB in regards to these allegations.

§ 87(2)(b) was inconsistent in describing if officers fell to the ground with § 87(2)(b) and when he was actually handcuffed [BR 12]. After § 87(2)(b) was on the ground, officers had their knees along § 87(2)(b)’s body but § 87(2)(b) could not see where. § 87(2)(b) did not observe any officers rub § 87(2)(b)’s head on the ground. § 87(2)(b) stated that he heard cursing during the initial encounter between § 87(2)(b) and the officers but could not tell who it was coming from.

§ 87(2)(b) did not indicate he observed or heard any of this alleged misconduct during his partial unverified phone statement [BR 13].

Sgt. Moultrie stated that after he realized that the Taser had no effect on § 87(2)(b) one of the officers called for back-up [BR 34]. Sgt. Moultrie did not recall how long it took the officers to respond but he stated he just continued holding § 87(2)(b) in a “bear-hug” waiting for their arrival. § 87(2)(b) was still attempting to move and one of Sgt. Moultrie’s partners was assisting him in holding § 87(2)(b). Sgt. Moultrie denied rubbing § 87(2)(b)’s head on the concrete and explained that § 87(2)(b)’s head was never a concern since he was moving his arms and not his head. When asked if he applied force to § 87(2)(b)’s back with his knee, Sgt. Moultrie replied that his entire body was lying on top of § 87(2)(b) so it was plausible that some items from his tool belt might have rubbed against § 87(2)(b)’s body. Sgt. Moultrie denied making the alleged statements towards § 87(2)(b) and stressed the fact that he is also African American and would not allow anyone to make such derogatory statements to another African-American. Sgt. Moultrie stated that § 87(2)(b) was handcuffed after the back-up officers arrived.

PO Baez testified that the back-up officers arrived in a few seconds and he and his partners just continued to attempt to grab § 87(2)(b)'s arms while waiting for them [BR 27]. PO Baez denied observing or hearing Sgt. Moultrie commit the alleged misconduct and confirmed that § 87(2)(b) was handcuffed after the back-up officers arrived. PO Pinales' account of this part of the incident was similar to PO Baez's [BR 28].

PO Christopher Crocitto of the same command and Sgt. Edward Lennis, who was assigned to that command on the day of the incident, acknowledged responding to the incident but did not observe Sgt. Moultrie commit the alleged misconduct [BR 32, 33].

Only video evidence discussed in the previous part of the report captured the incident prior to the arrival of the back-up officers [BR 36, 37, 38, 40, 41]. None of the clips depict the alleged misconduct or show the incident in its entirety. Additional video recorded by PO Pinales' BWC as well as back-up officers' PO Luctamar's, PO Badia's, and PO Reisenauer and PO did not depict the alleged misconduct either [BR 42, 43, 44]. After their arrival, § 87(2)(b) was surrounded by numerous officers and his and their actions are not visible.

Medical records and police documentation that are relevant to the force allegation covered in this section are discussed in the section above [PD 01 - 03, NYPD 02, 06].

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **Allegation (K) Force: An officer used physical force against § 87(2)(b)**

§ 87(2)(b) did not make this allegation, however it was captured on video. It is undisputed that after the subject officers called for back-up, PO Badia, PO Reisenauer, PO Noonan, PO Cody Petrucci, PO Rafael Rispoli, PO Luctamar, PO Seville Legrand, PO Angel Rivera, PO Crocitto all of the same command as well as Sgt. Lenis, who was assigned to the 47<sup>th</sup> Precinct at the time, arrived on the scene among a large number of unidentified officers.



Cell phone video 4.mp4

[BR 39]

Witness cell phone 4

Cell phone video 4 recorded by § 87(2)(b) depicts an unidentified white or Hispanic uniformed officer punch § 87(2)(b) in what appears to be leg area while he is lying on the ground at 2 seconds [BR 39]. While the second video recorded by PO Pinales does not show this allegation, it depicts various officers who were near § 87(2)(b) at the time [BR 42].

Sgt. Moultrie and PO Baez denied punching § 87(2)(b) or observing any officers do so [BR 27, 34]. PO Pinales denied witnessing the alleged misconduct [BR 28].

PO Petrucci and PO Noonan, both white males, had no recollection of the incident or of punching § 87(2)(b) [BR 29, 31]. Moreover, PO Petrucci is not Taser qualified. Sgt. Lennis and PO Crocitto, who were dressed in plain clothes during the incident, did not recall observing any officers punch § 87(2)(b) [BR 32, 33]. None of the officers interviewed could identify the subject officer based on the cell phone video and PO Pinales' second BWC video [BR 27, 28, 31, 32, 33, 34].

§ 87(2)(g)

**Allegation (L) Discourtesy: Sergeant Melvin Moultrie acted discourteously toward § 87(2)(b)**

§ 87(2)(b) stated that after the back-up officers arrived, some of them told Sgt. Moultrie to get off § 87(2)(b) since he was still holding his knee on § 87(2)(b)'s back [BR 09]. One officer told Sgt. Moultrie that he could not treat people like that and other officers attempted to lift § 87(2)(b) up. Sgt. Moultrie told them, "Don't lift him up like that. Put his shirt over his head." An officer took the front of § 87(2)(b)'s shirt and placed it over his head. While § 87(2)(b) did not see the officer who did that, he believed it was Sgt. Moultrie since the rest were sympathetic. § 87(2)(b) was placed in a car with his shirt on his head and eventually was able to take his head out of it. § 87(2)(b) was consistent in his preceding testimony to the CCRB in regards to this allegation.

§ 87(2)(b) stated that he observed § 87(2)(b)'s shirt get pulled over his head during the struggle between him and the officers that occurred at some point near the fall to the ground [BR 12]. He did not observe any officers pull the shirt over § 87(2)(b)'s head. After § 87(2)(b) was lifted off the ground, § 87(2)(b) observed that only the top part of § 87(2)(b)'s shirt was around his neck and the rest was ripped off. § 87(2)(b) did not observe how that happened.

§ 87(2)(b) did not indicate he observed this alleged misconduct during his partial unverified phone statement [BR 13].

Sgt. Moultrie stated once the back-up officers arrived, he continued to hold § 87(2)(b) but let them handcuff him [BR 34]. He assisted the other officers in lifting § 87(2)(b) after which § 87(2)(b) was walked away into a car and Sgt. Moultrie had no further interaction with or saw him. Sgt. Moultrie denied pulling § 87(2)(b)'s shirt over his head not did he observe other officers do so.

PO Baez and PO Pinales' account of this part of the incident was largely consistent with that of Sgt. Moultrie and they denied observing Sgt. Moultrie do the alleged [BR 27, 28].

Sgt. Lennis and PO Crocitto did not witness the alleged misconduct [BR 32, 33].

The second video recorded by PO Pinales' BWC depicts multiple unidentified officers as well as Sgt. Lennis and PO Crocitto lifting § 87(2)(b) off the ground and placing him in a police car [BR 42]. § 87(2)(b) is not visible in the camera view since he is surrounded by the officers.

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party [BR 50].
- Sgt. Moultrie has been a member of service for 15 years and has been a subject in eight additional CCRB complaints and 12 allegations, of which four were substantiated:
  - 200509009 involved substantiated allegations of physical force, question and/or stop, and retaliatory arrest against Sgt. Moultrie. The NYPD imposed Command Discipline A as recommended by the Board.
  - 200600429 involved a substantiated allegation of question and/or stop against Sgt. Moultrie. The Board recommended Charges and the NYPD imposed no discipline.
  - 200502222 involved an exonerated pepper spray allegation against Sgt. Moultrie.
  - § 87(2)(g)
- PO Pinales has been a member of service for 3 years and has been a subject in one additional CCRB complaint and one allegation, which was not substantiated.
- PO Baez has been a member of service for 3 years and has been a subject in one additional CCRB complaint and one allegation, which was not substantiated.

**Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- As of December 14, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint [BR 51].
- § 87(2)(b), § 87(2)(c)

Squad No.: 8

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Title & Name

\_\_\_\_\_  
Date